No.....

In the Supreme Court of the United States

OCTOBER TERM, 1940

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Petitioner,

vs.

PACIFIC COAST COAL COMPANY, a corporation, *et al.*, and UNITED STATES OF AMERICA,

Respondents.

Brief in Support of Petition for Writ of Certiorari

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IVY PRESS, SEATTLE

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. OPINIONS OF THE COURTS BELOW.

The opinion and dissenting opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 5608) are reported as *The Denali,* in 105 F. (2d) 413 (1939), the opinion and dissenting opinion on rehearing (R. 5632) are reported in 112 F. (2d) 952, (Adv. Op., 1940). The

opinion of the District Court (R. 5463) is reported as *The Denali,* in 23 F. Supp. 145 (1938).

II. JURISDICTION.

The jurisdiction of this Court is invoked under sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925; 43 Stat. 938, Title 28 U. S. C., §347(a).

III. STATEMENT OF THE CASE.

Except as more detailed reference to the record is required for a complete discussion of the assignments of error and questions presented, the statement of the matter involved as set forth in the petition (p. 1) is believed sufficient and is adopted in the interest of brevity.

IV. ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals for the Ninth Circuit erred in the following particulars:

1. In construing sec. 2 of the statute (§2 of the Act of May 11, 1918; App. III) to require a division of watches of the three mates so that the watch time of each mate will not exceed 8 hours a day, served in watch periods of not exceeding 4 hours each, and in not limiting its application to the three mates and in applying the same to the pilot; and in construing sec. 3 of the statute (§3 of the Act of May 11, 1918; App. IV) by refusing to apply the same to the pilot; and in concluding that the third mate exceeded 8 hours watch duty a day.

2. In deciding that a violation of the statute (§2 of the Act of May 11, 1918; App. III) or other manning statute, without more, rendered the DENALI unseaworthy and that where such violation is customary, exoneration under sec. 3 of the Harter Act must be denied (Title 46 U. S. C., §192; App. II).

3. In deciding that where there has been a customary violation of the statute (§2 of the Act of May 11, 1918; App. III) or other manning statute, then, without more, there must be a finding of privity and knowledge of such violation.

4. In deciding that where there has been a customary violation of the statute (§2 of the Act of May 11, 1918; App. III) or other manning statute, and a resulting finding of privity and knowledge of such violation therefrom, petitioner must in addition to proving by the ordinary preponderance of the evidence that it was without privity or knowledge of the cause of the loss, in this case a fault or error in navigation, prove that such violation "could not have contributed to the stranding."

5. In denying exoneration from liability.

6. In denying limitation of liability.

ARGUMENT.

SUMMARY OF ARGUMENT.

1. The "three-watch" statute was not violated.

2. Exoneration from liability should have been granted.

(a) The DENALI was in fact seaworthy. The holding that the mere violation of the statute ren-

dered her unseaworthy is in conflict with *Hartford & New York Transp. Co. v. Rogers & Hubbard Co.*, 47 F. (2d) 189, 191 (C. C. A. 2; 1931), and an erroneous restriction of the operation of sec. 3 of the Harter Act.

(b) Due diligence was exercised to make the DENALI seaworthy.

3. Limitation of liability should have been granted.

(a) Petitioner was without privity or knowledge of the alleged violation of the statute. The holding that a customary violation of the statute requires a finding of privity and knowledge is in conflict with *The Virginia,* 264 F. 986 (1920), aff'd. in *Hines v. Butler,* 278 F. 877 (C. C. A. 4; 1921) and *LaBourgogne,* 210 U. S. 95, 122 (1908).

(b) The majority has misconstrued and misapplied the Pennsylvania rule. It is not required that petitioner prove that the violation of the statute could not, in the sense of could not by possibility, have contributed to the stranding.

THE "THREE-WATCH" STATUTE WAS NOT VIOLATED.

The statute had been a part of the law governing the navigation of vessels such as the DENALI for 22 years prior to her stranding, but has never heretofore been the subject of judicial inquiry on the points now at issue.

The term "watch" in maritime parlance has two meanings, one refers to the divisions of time when a

certain portion of the vessel's personnel is on duty, the other refers to the men themselves when so employed.[1] Here we are primarily interested in the term "watch" as it applies to the divisions of time. Prior to the original enactment of the statute in 1913 there were no statutory requirements respecting watches or hours of duty. Both sections of the statute, sec. 2 relative to divisions of watches, and sec. 3 relative to hours of duty, must be considered together and require no more than that the total time of navigating duty be equally divided among the three mates, no one division of such duty to exceed 12 hours in any 24-hour period. Sec. 2 of the statute applies only to the three mates and does not apply to any other officers carried by the vessel. Dividing the entire time of navigating duty into three equal periods will always result in each mate serving an average of 8 hours in each 24-hour period.[2] There is a vital difference between an average 8 hours work in 24, as thus effected, and "8 hours a day" as stated by the Circuit Court of Appeals. It was not until 1936 that an 8-hour day was established.[3] The statute established a maximum 12-hour day, not a

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[1] *Paasch, Illustrated Marine Encyclopedia, Antwerp,* 1890, p. 300.

[2] The entire time of duty (reckoned from midnight to midnight or other starting time) will always be 24 hours or multiples thereof and if the time be equally divided irrespective of the length of each division or watch (provided the same must not exceed 12 hours) the average length of time served by each mate in a 24-hour period will be determined by dividing the full period, say 72 hours, by the number of 24-hour periods, in this instance three, and again dividing by the number of mates, in this instance three, and the result will always be an average of 8 hours in each 24-hour period.

[3] §2 of the Act of June 25, 1936, as amended, App. IV.

maximum 8-hour day. There is nothing in the statute to warrant the construction that the 12-hour maximum day does not apply to the three mates required to be divided into three watches.

The Circuit Court of Appeals in addition to erroneously construing the statute to fix a maximum of 8 hours duty a day for the three mates, has further read into the statute the limitation that the 8 hours duty must be served in periods of not to exceed 4 hours each. This results from the statement that by immemorial Anglo Saxon maritime custom the time period of a watch never exceeds 4 hours (R. 5612). There is no testimony in the record to support such statement, on the contrary watch periods of 6 hours as employed on the DENALI, were shown to be customary in the Alaska trade both on petitioner's vessels and others and the District Court found that the "watches as set and divided * * * were in fact in accordance with good, customary and safe practice in the Alaska trade." (R. 5457). It also appears that at the time of the original enactment of the statute in 1913, watch periods of 6 hours and more were customary.[4] A study of com-

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[4] Testimony before the Senate Committee on Commerce (62nd Cong. 3rd Sess. No. 2, Jan. 14, 1913) on H. R. 23676 which became the original "three-watch" statute, showed a custom of standing watches of 6 hours duration on the Pacific Coast (p. 102), Great Lakes (pp. 88, 90, 92, 120) and on ocean-going tugs (pp. 120, 126, 131, 132, 140). Testimony before the House Committee on Merchant Marine and Fisheries (62nd Cong. 2nd Sess., Mar. 7, 1912) on H. R. 20285 the provisions of which became H. R. 23676 showed a custom of standing watches of 6 hours duration on seagoing tugs (p. 26), Atlantic coastwise vessels (p. 34), Atlantic seagoing tugs (p. 41) and on vessels generally (pp. 52, 61, 88, 90, 92, 97, 112, 117, 119, 124, 131, 132). The testimony before a sub-committee of the Senate Committee on Commerce (62nd

parative law and practice discloses a variety of watch systems on both a two-watch and three-watch practice, but under no system is the period of watch duty limited to 4 hours and on the contrary watch periods ranging from 1 hour to 6 hours are commonplace.[5]

If the immemorial custom referred to in fact existed and is to be read into the statute, it must likewise be so read into the later statute enacting a maximum 8-hour day. This, however, is not in accordance with administrative construction. In a letter of July 14, 1939 (App. V) the Bureau of Marine Inspection and Navigation through an assistant director, in referring to the later statute, states:

> "It should be pointed out that while the watches of licensed officers must be equally divided and successive, *there is no statutory requirement which establishes that these watches must be four hours on and eight hours off.* Under the present statute, the watches may be set in any manner which the employer deems expedient, so long as they are equally divided and successive, and the licensed officers are not required to work more than *eight hours* in one day."

It is apparent that no violation of the statute by the first mate could by any possibility have caused or con-

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Cong. 3rd Sess. 1912) on H. R. 23673, the provisions of which as S. B. 136 (63rd Cong.) became the Seamen's Act, showed a custom of standing watches of 6 hours duration on the Great Lakes (Part 2, pp. 88, 90, 94, 95, 111, 120, 125; Part 6, pp. 372, 383; Part 9, pp. 577, 583; Part 11, pp. 738, 767; Part 12, p. 801) and in off-shore operations generally (Part 6, p. 392; Part 8, pp. 526, 527, 528) and of 12 hours on smaller Atlantic coastwise vessels (Part 3, p. 144). See also Cong. Rec. Vol. 50, Part 7, p. 5674 (63rd Cong. 1st Sess., Oct. 16, 1913).

[5] *International Labor Conference, Preliminary Report,* 13th Sess., Geneva, 1929.

tributed to the stranding.[6] The Circuit Court of Appeals has, however, arbitrarily applied the watch provisions of the statute to the pilot. It would appear to be clear that the watch provisions of the statute must be applied only to the three mates. The pilot was not in fact one of the three mates, he was an additional officer not required by statute, but permitted by the DENALI's certificate and was carried as an additional navigating precaution. The only statutory requirement applicable to him was that he must not work in excess of 12 hours in any 24-hour period and this he did not do. The Circuit Court of Appeals, however, applied its construction of the watch provisions of the statute to the second mate, third mate and pilot with the result that it was held that the pilot should have been on duty but 8 hours a day, rather than 12 hours a day, and as he was on duty at the time of stranding the DENALI was then held to be in violation of the statute.[7] The erroneous construction and application of the statute has resulted in an obvious miscarriage of justice by penalizing petitioner for employing and using an experienced pilot in addition to the regular number of mates in the navigation of the DENALI, which should be corrected by this Court.

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[6] *The North Star*, 255 F. 955 (C. C. A. 2; 1919); *The Wyomissing*, 72 F. (2d) 834, 838 (C. C. A. 3; 1934); *The Nacoochee*, 137 U. S. 330, 341 (1890); *The Blue Jacket*, 144 U. S. 371, 389 (1892).

[7] Approximately two months after the original enactment of the "three-watch" statute complaint was made of the practice of pilots on vessels of petitioner serving 12 hours a day in alleged violation of the statute. The complaint was dismissed by the Department of Commerce on the ground that there was no violation. (App. VII-XI)

EXONERATION FROM LIABILITY SHOULD HAVE BEEN GRANTED.

The Circuit Court of Appeals denied exoneration under sec. 3 of the Harter Act based first on the finding that the DENALI was navigated in violation of the statute and that such violation, without more, rendered the DENALI unseaworthy; and second, that as such violation was customary on the vessels of petitioner there was therefore lack of due diligence to make the DENALI seaworthy.

It is conceded that exoneration from liability for claims arising from the stranding may only be granted if petitioner is able to show either that the DENALI was in fact seaworthy at the commencement of the voyage, or that due diligence was exercised to make her so. It is, of course, clear that if the DENALI was in fact seaworthy at the commencement of the voyage the issue of "due diligence" becomes immaterial. *The Indien,* 71 F. (2d) 752, 756 (C. C. A. 9; 1934); *The Wildcroft,* 201 U. S. 378, 386 (1906). The test of seaworthiness "is whether the vessel is reasonably fit to carry the cargo which she has undertaken to transport." *The Sylvia,* 171 U. S. 462, 465 (1898). Perfection is not required. *Pillsbury Flour Mills Co. v. Becker S. S. Co.,* 49 F. (2d) 648, 650 (D. C. N. Y., 1931). The issue is one of fact. *M'Lanahan v. The Universal Insurance Co.,* 1 Pet. 170, 184 (1828).

The District Court found as a fact that not only had due diligence been exercised to make the DENALI seaworthy at the commencement of the voyage, but

that she was in fact seaworthy (R. 5450). The Circuit Court of Appeals has not disturbed the District Court's finding that the DENALI was in fact seaworthy, but has held as a legal conclusion that a violation of the statute, without more, rendered her unseaworthy (R. 5636). In so holding the Circuit Court of Appeals has erred and its decision is in conflict with *Hartford & New York Transp. Co. v. Rogers & Hubbard Co.*, 47 F. (2d) 189, 191 (C. C. A. 2; 1931) wherein it was contended that the vessel was unseaworthy because she carried but one able seaman, although her certificate required two able seamen. Augustus N. Hand, J., for the court, said:

> "Failure to comply with the terms of the certificate would subject those responsible for the irregularity to penalties, but would not necessarily render the vessel unseaworthy. Seaworthiness in respect to the crew of a vessel depends on whether the personnel is competent to perform maritime services and not on certificates. The personnel in the present case was satisfactory."

Despite a violation of the statute there therefore still remains the factual question as to whether or not the DENALI was seaworthy despite such violation. The Circuit Court of Appeals not having disturbed the finding of the District Court that the DENALI was in fact seaworthy at the commencement of the voyage and having erred in deciding that a violation of the statute, without more, rendered her unseaworthy, the Circuit Court of Appeals has erred in failing to affirm the decree granting exoneration.

Further, assuming that a violation of the statute, without more, rendered the DENALI unseaworthy, nevertheless petitioner is entitled to exoneration from liability if "due diligence" was exercised to make her seaworthy at the commencement of the voyage. The Circuit Court of Appeals finds a lack of such due diligence solely because of a customary violation of the statute (R. 5624, 5625). Whether such due diligence has been exercised is a question of fact "which must be proved by a showing of what was actually done to this end, and that this was all that could reasonably have been expected to have been done." *The Point Brava,* 1 F. Supp. 366, 368 (D. C. Cal., 1932).

The Circuit Court of Appeals does not find a wilful or intended violation of the statute. It can scarcely be assumed that petitioner would intentionally violate a statute which might deprive it both of exoneration and limitation, as has resulted in this case. On the contrary, petitioner for the sole purpose of greater safety of life and property employed a qualified pilot in addition to the master and three mates required by law. Petitioner finds itself charged with a violation of the statute and with lack of "due diligence" solely because it did not know during the 22 years in which the statute was in force, and particularly on the voyage of the DENALI, that the same was subject to the construction given it by the Circuit Court of Appeals.

The facts do not support a finding of lack of "due diligence" because of this failure to correctly construe the statute or to anticipate the construction placed

thereon. The Circuit Court of Appeals found that the alleged violation was a "customary violation" existing on all petitioner's vessels (R. 5625). It appears without conflict in the testimony that the method of operation of the vessels in petitioner's fleet was well-known to the Inspectors of the Bureau of Marine Inspection and Navigation.[8] No objection has ever been made by the Inspectors that the statute was being violated by petitioner, despite their intimate knowledge of its method of operation. On the contrary, they had permitted the vessels to be so operated under certificates expressly stating that the same were "in all things in conformity with the laws governing the Steamboat Inspection Service and the Rules and Regulations of the Board of Supervising Inspectors" (Pet. Ex. 8).

In order to show "due diligence" it is not necessary in addition to showing that petitioner has done all that could "reasonably have been expected to have been done" that petitioner further show that there has been no statutory violation, such is not the requirement of the statute. Nor does the fact that some statute or regulation has been violated require a holding that "due diligence" has not been exercised, to do so would be to require perfection, not that petitioner has done all that is reasonably to be expected to have been done.

If petitioner, in addition to placing reliance on its own construction of the statute, and on the acquiescence of the Bureau of Marine Inspection and Navigation and its subordinate officers therein, had likewise

[8] R. 802, 814, 815, 817, 825, 870, 876.

relied on the opinion of the District Court and the ruling of the Department of Commerce (App. VII-XI) and of the Bureau (App. V) it would nevertheless have failed in the "requisite perfection." No amount of legal acumen would have availed petitioner short of prescience, and that is something far removed from the reasonable action required for "due diligence."

The fact that this alleged customary violation of the statute existed without government interference establishes a reasonable standard of conduct[9] and if it were contended that it was not reasonable then the burden was on respondents to come forward with some testimony showing that petitioner's reliance thereon was unreasonable. The test, we again state, is not whether in fact petitioner was in violation of the statute, but whether its conduct in that regard fails to meet a reasonable standard to be applied to petitioner.

Even an attorney, whose business it is to know the law, is not held responsible "for being in error as to a question of law on which reasonable doubt may be entertained by well informed lawyers, or for error in judgment on points of new occurrence, or of nice or doubtful construction." 7 C. J. S. p. 980, §142. The undisputed facts make a *prima facie* showing of "due diligence" and as stated in *The Buckleigh,* 31 F. (2d) 241, 243 (C. C. A. 2; 1929):

> "Enough evidence was offered to place upon the libelants the duty of going forward with proof, if

[9] *Mintz v. Baldwin,* 289 U. S. 346, 351 (1933); *Norwegian Nitrogen Prod. Co. v. U. S.,* 288 U. S. 294, 315 (1933); *United States v. Chicago, N. S. & M. R. Co.,* 288 U. S. 1, 13 (1933).

they wished to avoid the exemptions of the Harter Act * * * ."

No proof was offered by respondents to meet the showing made by petitioner. The decision erroneously restricts the operation of sec. 3 of the Harter Act and should be corrected by this Court.

LIMITATION OF LIABILITY SHOULD HAVE BEEN GRANTED.

On the assumption that there was in fact a violation of the statute in the watch in which the DENALI stranded, the final questions presented are whether the Circuit Court of Appeals erred in finding privity and knowledge of such violation and if not, whether the majority of the Circuit Court of Appeals erred in its application of the Pennsylvania rule to the issues presented. If the rule is not applicable, then limitation of liability must be granted.

PETITIONER WAS WITHOUT PRIVITY OR KNOWLEDGE OF THE ALLEGED VIOLATION OF THE STATUTE.

The Circuit Court of Appeals has found privity and knowledge on the part of petitioner of the violation of the statute "because it was by its regulation and established practice that the navigating mate [pilot] in the maneuvers leading to the strand commanded the vessel while he was and had been violating the three watch requirement of the statute by standing 12 hours per day in navigating during the entire voyage" (R. 5634).

The Circuit Court of Appeals thus apparently refers to its previous holding that the first mate stood no regular watch and that this was the custom on the vessels of petitioner in the Alaska trade (R. 5615) and to General Order No. 13 directed to all masters and pilots instructing them to "never leave the ship in charge of second or third officers when approaching land and changing course" (R. 5617, 5618). Reference has been made to the watches actually stood by the first mate. General Order No. 13 is obviously an instruction that either the master or pilot must be on duty in the pilot house when their superior local knowledge is most needed for the safety of the vessel.

The Circuit Court of Appeals has not found that there was any bad faith or wilfulness on the part of petitioner. The most that can be said is that it was customary for petitioner to operate its vessels in the manner in which the DENALI was operated. It now appears for the first time that this customary practice was violative of the statute as construed by the Circuit Court of Appeals. It is submitted that this is not such privity or knowledge as to debar petitioner from the right to limitation of liability.

The statutes granting to shipowners limitation of liability are designed to promote and encourage shipping and are to be administered in the shipowners' favor and not with a tight and grudging hand. In *Moore v. American Transp. Co.*, 24 How. 1, 39 (1860), it is said:

> "The act was designed to promote the building of ships, and to encourage persons engaged in the

business of navigation, and to place that of this country upon a footing with England and on the continent of Europe."

In *Providence & New York S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578, 588, 589 (1883), it is said:

> "In these provisions of the statute we have sketched in outline a scheme of laws and regulations for the benefit of the shipping interest, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law will largely depend on the manner in which it is *administered*. If the courts having the execution of it *administer* it in a spirit of fairness, with the view of giving to ship owners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated), will be of the last importance; but if it is administered with a tight and grudging hand, construing every clause most unfavorably against the ship owner, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment. * * * ."

In *Capitol Trans. Co. v. Cambria Steel Co.*, 249 U. S. 334, 336 (1919), it is said:

> "We very much appreciate the danger that the act should be cut down from its intended effect by too easy a finding of privity or knowledge on the part of owners, as also by too liberal an attribution to them of contracts as personally theirs. We are not disposed to press the law in those directions further than the cases go."

Petitioner here at most was in error as to the legal interpretation of the statute as applied to the navigation of the DENALI. Even as to an attorney, skilled in the law, this would at most amount to mere negli-

gence. It is well settled "that mere negligence, pure and simple, in and of itself does not necessarily establish the existence on the part of the owner of privity and knowledge within the meaning of the statute." *LaBourgogne,* 210 U. S. 95, 122 (1908).

This rule was applied in *Kitsap County Transp. Co. v. Harvey,* 15 F. (2d) 166, 168 (C. C. A. 9; 1926), where a shipowner was held liable for injuries sustained by a passenger due to negligent original construction of the vessel, but was nevertheless held to be entitled to limitation. The owner knew of the construction of the vessel, which was found to be improper. The court after first adverting to the liberal construction to be given the limitation statute and that "privity or knowledge" means something more than mere negligence, said:

> " * * * there is no evidence of *bad faith or wilfulness.* The design of the vessel is not without the approval of some competent authority, and upon the whole the question of negligence is a debatable one. Accordingly we hold it a proper case for the limitation of liability."

So here there is no evidence of bad faith or wilfulness. The practice was found to be customary and had received the approval, implied if not expressed, of the Inspectors and of the Department of Commerce. The construction of the statute required to effect a violation is at least debatable and therefore this likewise is a proper case for limitation of liability.

The decision of the Circuit Court of Appeals is in conflict with *The Virginia,* 264 F. 986, 996, 997 (D. C.

Md., 1920), aff'd. in *Hines v. Butler,* 278 F. 877 (C. C. A. 4; 1921) and *LaBourgogne,* 210 U. S. 95 (1908). In the former case there was a negligent failure to obey the inspection laws and regulations, which negligence "was due in part at least to the personal negligence of the petitioner" and had been long continued and "but for such negligence, the fire might have been extinguished before the cargo was destroyed." The court nevertheless granted limitation as to cargo claims, holding that the negligence did not amount to "privity or knowledge." After referring in part to the above quoted language from *LaBourgogne,* 210 U. S. 95, 122 (1908), the District Court said:

> " * * * there must be something more than mere *thoughtlessness or casual oversight.* * * * . Perhaps the owner cannot deny privity or knowledge if * * * he fell short of what a fair-minded, well-informed, and impartial man would feel was his moral duty in the premises."

Can it be said that petitioner here was guilty of even thoughtlessness or casual oversight? We think not. On the contrary petitioner considered that the addition of a pilot, as had been customary for years, was an added precaution. Petitioner erred not in attempting to underman the vessel, but in an alleged erroneous overmanning.

THE MAJORITY HAS MISCONSTRUED AND MISAPPLIED THE PENNSYLVANIA RULE.

The majority of the Circuit Court of Appeals has held that there was a violation of the "three-watch"

statute, of which petitioner had privity and knowledge and although it appears from the evidence that such violation *did not* cause or contribute to the stranding, has nevertheless held that limitation must be denied because of petitioner's failure to meet the "extraordinary burden" of showing that the violation *could not,* as distinguished from *did not,* contribute to the stranding (R. 5618, 5619). This result is said to follow from *The Pennsylvania,* 19 Wall. 125 (1873), and *Lie v. San Francisco & Portland S. S. Co.,* 243 U. S. 291 (1917). Therein lies the division between the majority and dissenting opinions. Mathews, J., dissenting, held that petitioner had only the "ordinary burden" of proving that the stranding occurred without its privity or knowledge, not the "extraordinary burden" imposed in the cited cases—both collision cases—the doctrine of which he held inapplicable. He further held that the evidence amply supports the District Court's finding that the sole cause of the stranding was due to faults or errors in her navigation of which petitioner was without privity or knowledge (R. 5629).

Rehearing was granted on the question of whether the Pennsylvania rule should be applied (R. 5636) resulting in the same division of opinion (R. 5632).

Petitioner asserts: First, that the Pennsylvania rule is a procedural rule applicable only on the question of liability in a collision case. It transfers the burden of persuasion on the issue of causation to the vessel violating a statutory rule to prevent collisions by requiring the offending vessel to prove that the violation

was not a contributory cause. This burden of persuasion is but the ordinary burden and is not an "extraordinary burden" requiring proof that the violation *could not,* in the sense of could not by possibility, have been a contributory cause. Second, that the rule may not be applied in a limitation case to add to the burden of the petitioner to show that it was without privity or knowledge of the cause of the loss. This burden is but the ordinary burden and the rule may not be used as a presumption and as such be given weight as evidence.

First: The Pennsylvania rule is taken from *The Pennsylvania,* 19 Wall. 125 (1873) where a collision occurred in a fog on the high seas between a British bark and a British steamer. Both by British and American statute a fog horn was to be blown by the bark while under way and a bell was to be sounded when not under way. The bark was under way and sounded a bell. Both vessels were found at fault and in referring to the bark this Court said:

> " * * * when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been." (p. 136.)

After referring to the speculative nature of the testimony as to whether the failure of the bark to blow a

fog horn contributed to the collision, it is stated:

> " * * * while the presumption is that the failure to blow a fog horn was a contributory cause of the collision, and while the burden of showing that it was in no degree occasioned by that failure rests upon the bark, it is impossible to rebut the presumption. * * * . Hence, it appears to us the bark has not proved that her failure to obey the shipping regulations *was not* a concurrent cause of the injury she received * * * ." (pp. 137, 138.)

At the time of this decision the English law on collisions which this Court purported to adopt, was announced in *The Fenham,* 23 L. T. 329 (1870) quoted in the decision (p. 136) as follows:

> " * * * if it is proved that any vessel has not shown lights, the burden lies on her to show that her non-compliance with the regulations *was not* the cause of the collision."

In *The Pennsylvania,* 23 L. T. 55 (1870), being a decision involving the same collision, the bark was exonerated from liability on the finding "that the collision *was not* occasioned by the absence of blowing the fog-horn." It is apparent that this Court did not intend to announce a different rule or change the rule which it had previously announced in such cases, and the difference in result was said to be due to the fact that "the case was heard there on evidence much less full than that upon which it was heard in New York, especially less full on the part of the steamer" (p. 129). In referring to the different result reached, this Court in *The Martello,* 153 U. S. 64, 74 (1894), said: " * * * both courts proceeded upon the same legal principle * * * ."

It is to be noted, however, that the rule is stated by this Court as requiring a "showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been." However, in *Richelieu Nav. Co. v. Boston Ins. Co.,* 136 U. S. 408, 422 (1890) this language is said to be "but the statement of the settled rule in collision cases." The settled rule in collision cases where a statutory violation existed was previously announced by this Court in *Waring v. Clarke,* 5 How. 441, 465 (1846) as follows:

> " * * * if such neglect or disobedience of the law shall be proved to exist when injury shall occur to persons or property, it would throw upon the master and owner of a steamboat by whom the law had been disregarded the burden of proof, to show that the injury done *was not* the consequence of it."

Shortly thereafter in *The City of Washington,* 2 Otto 31, 36 (1875) the rule was similarly announced as follows:

> " * * * such an omission of duty casts upon the schooner the burden of proving that the omission in that regard *did not* occasion or contribute to the collision."

In *Prince v. Eastern S. S. Co.,* 109 Me. 395, 84 Atl. 894, 896 (1912) which contains a most precise discussion of the rule, the court in referring to the burden of proof imposed on the offending vessel, states:

> "*The Pennsylvania* obviously adopts the English rule laid down in *The Fenham,* Law Reports, 3 Privy Council Appeals 212. But the English rule does not refer, either directly or by inference,

to the 'could not' doctrine, as claimed by the defendant. It is stated in this direct language: 'The burden lies upon her to show that her non-compliance with the regulations was not the cause of the collision.' Following this rule, *The Pennsylvania* case nowhere declares that it must show that the ship's fault did not contribute, and then further, as a matter of independent proof, that it could not have contributed. The reasoning of the court negatives any such conclusion. Having by the process of elimination declared that it was not enough to show, 'not merely that her fault might not have been one of the causes, or that it probably was not,' and, the ship having failed to establish that her fault did not contribute, the court required her to prove that her fault 'could not have contributed' and, *arguendo,* did not. *The Pennsylvania,* having adopted the rule of proof laid down in *The Fenham,* undoubtedly intended to declare that the 'could not' rule in the one case, and the 'did not' rule in the other, were identical in meaning, and that proof of 'could not' was equivalent to proof of 'did not.' "

The English rule which this Court adopted was subsequently changed by statute, sec. 17 of the Merchant Marine Shipping Act, 1873, 36 & 37 Vict. c. 85, subsequently reenacted by sec. 419(4) of the Merchant Shipping Act, 1894, which latter statute provides:

> "Where, in a case of collision, it is proved to the Court before which the case is tried that any of the collision regulations have been infringed, the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary."

As stated by *Marsden's Collisions at Sea* (9th ed., 1934), pp. 55, 56 one of the objects of this legislation

was "to enable the courts to adjudicate upon collision cases without the necessity of determining upon conflicting evidence the question of fact, (often a nice one), whether or no an infringement of a regulation, applicable to the case, and that might by possibility have contributed to the collision, did, in fact, contribute to the collision * * * . The statute imposed on a vessel that has infringed a regulation which is *prima facie* applicable to the case, the burden of showing affirmatively that such infringement could not, by possibility, have contributed to the collision. The Court had to inquire into the facts, in order to ascertain whether the infringement could possibly have contributed to the collision, for it was not sufficient to find that it did not contribute."

In *The Martello,* 153 U. S. 64 (1894) it is stated, without apparently recognizing the change which had been effected by statute in England, that the rule as announced in *The Fanny M. Carvill,* 13 App. Cas. 455 n. (1875); *The Duke of Buccleuch,* 15 P. D. 86; S. C. 1 App. Cas. (1891) 310; *The Love Bird,* 6 P. D. 80 (1881), was to the same effect as the Pennsylvania rule. These English cases, however, were announcing the rule in England as changed by statute, as witness the quotation in the opinion (p. 74) from *The Fanny M. Carvill*:

> " * * * if you can show that there is a defect in the lights, that vessel must be held to blame unless she can show that the defect which existed in her lights could not by any possibility have contributed to the collision."

It is not believed that this error effected the decision as it appears that the vessel which was in violation of the statute did not in fact prove that the violation *did not* contribute to the collision. This error has subsequently been reflected in the language of some of the lower court decisions, but in the following cases the correct burden of the rule is announced: *Dougherty v. Steamer Franconia,* 3 F. 397, 403 (D. C. N. Y.; 1880); *The Providence,* 282 F. 658, 664, 665 (D. C. R. I,. 1922); *The Mabel,* 35 F. (2d) 731, 732 (C. C. A. 2; 1929); *The Domira,* 49 F. (2d) 324, 327 (D. C. N. Y., 1931).

By the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57, secs. 4(1), 9(2)), sec. 419(4) of the Merchant Shipping Act, 1894, was repealed. As stated by *Marsden's Collisions at Sea,* (9th ed., 1934) p. 65:

> "The effect of the Act is to abolish an arbitrary rule by which any infringement, which by possibility might have contributed to the collision, rendered a vessel to blame and to 'leave the Court to follow what is a reasoning judgment and to say, "Did this want of obeying the regulations in any way contribute to the collision?" not "Might it possibly have done so?" ' It has thus now again become necessary to prove that non-observance of a regulation was the cause, or part of the cause, of a collision or of the damage resulting from the collision, as it always had been before 1873."

Thus the history of the English rule—limited, it may be observed, to maritime collisions—shows that the so-called "arbitrary" rule was purely a creature of English statute, enacted to alter the rule in *The Fenham* and later repealed because of its unfairness.

The Pennsylvania having been decided prior to the enactment of the English statute, had merely adopted the rule previously announced by this Court and recognized by the English courts prior to 1873.

In admiralty[10] as at common law,[11] liability for negligence or unseaworthiness arises as a general rule only when a complaining party is able to sustain the burden of proving that the offending party has violated some duty, whether statutory or non-statutory, owed to him and that such violation has actually caused a loss. The Pennsylvania rule is clearly an exception even in admiralty and is to be applied only in collision cases. There must be some reason beyond the general policy of enforcing all statutory codes of conduct, before the rule should be extended to other than collision cases, as otherwise it would be the general rule both in admiralty and at common law. Inasmuch as most collisions result from a misunderstanding by one or both vessels as to the intended movements of the other, uniform rules, now statutory but formerly non-statutory, have been promulgated for the sole purpose of reducing such confusion to a minimum. Where, therefore, a collision results and a vessel is shown to have violated such rules it is thought fair and reasonable

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[10] *Cleary Bros. v. Port Reading R. Co.*, 29 F. (2d) 495, 498 (C. C. A. 2; 1928); *Republic of France v. French Overseas Corp.*, 277 U. S. 323, 334 (1928); *The Baymead*, 88 F. (2d) 144, 147 (C. C. A. 9; 1937); *The Europa*, 11 Asp. M. C. (N. S.) 19, 20 (1907); *Flanders, The Law of Shipping*, (1853) pp. 199, 288, 289; *Carver, Carriage of Goods by Sea* (8th ed., 1928) p. 21.

[11] *Shearman & Redfield Law of Negligence* (6th ed., 1913) §37; 2 Restatement of Law on Torts, §286; 20 R. C. L. 43, §37; 45 C. J. 901, §478; 45 C. J. 902, §479; 45 C. J. 1170, §752.

that the burden should be on the offending vessel to prove that her violation was not the very thing that caused the confusion and the resulting collision.[12]

That the rule presuming causation is limited to collision cases and that its application is not dependent upon the statutory nature of the violation, is further brought out in *Parsons on Maritime Law* (1859), Vol. I, p. 191, where it is stated: "Generally, if a collision has happened, and one vessel had been guilty of some negligence, the burden is on her to prove that this negligence was not the cause of the collision * * * ." It is to be noted that this early announcement of the rule subsequently stated in *The Pennsylvania* was prior to the original statutory enactment of the general rules for navigation.[13] Prior to the statutory enactment the burden was upon the libelant to establish the respondents' negligent conduct as in all other cases, by proving non-compliance with the customary collision rules generally followed by mariners. Negligence being established the rule later to be known as the Pennsylvania rule shifted the burden of persuasion on the issue of causation. The statutory enactment of the rules merely afforded a libelant the supplementary procedural advantage of a presumption of negligence arising from the statutory violation. This dual pro-

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[12] *Marsden's Collisions at Sea* (9th ed., 1934) pp. 7, 8; *LaBoyteaux, Rules of the Road at Sea,* (1920) pp. 1, 2, 6; *St. John v. Paine,* 10 How. 557, 583, 584 (1850); *New York & Liverpool U. S. Mail S. S. Co. v. Rumball,* 21 How. 372, 383, 384 (1858); *Clapp v. Young,* Fed. Cas. No. 2786 (D. C. Mass., 1843); *The Emily,* Fed. Cas. No. 4453 (D. C.) N. Y., 1845).

[13] R. S. §4233, Act of Apr. 29, 1864, c. 69, 13 Stat. 58.

cedural advantage was present in *The Pennsylvania. Parsons on Maritime Law* (1859) Vol. I, p. 193 n. in referring to early statutory enactments relative to lights, points out the additional procedural advantage, stating:

> "If a vessel disregard the provisions of these statutes, the burden is on her to show, in case of a collision, that the accident was not owing to such neglect."

The presumption of negligence and the shifting of the burden of persuasion on the issue of causation are in effect applied as one in collision cases involving violations of statutes. This is not true, however, of violations of statutes in cases other than collisions. In *St. Louis, I. M. & S. R. Co. v. McWhirter,* 229 U. S. 265, 281, 282 (1913), a brakeman was killed in an accident occurring after he had been on duty for more than sixteen hours in violation of the Hours of Service Act. The question in the case was stated as follows:

> " * * * whether there was any evidence tending to show a connection between the asserted negligence and the occurrence of the accident; that is, whether the plaintiff had offered any proof tending to show the existence of the Federal right which was asserted; * * *."

In holding that the judgment below in favor of the plaintiff must be reversed, it was said:

> " * * * we are clearly of the opinion that, as there was no proof tending to show a connection between the permitting of the working beyond the statutory time, and the happening of the accident, reversible error was committed. Of course the inquiry whether there was any proof having such tendency is not to be solved by indulging in mere

surmise or conjecture, or by resorting to imaginary possibilities, for to so do would but resolve the question back to the generic rule of liability as insurer which we have previously disposed of."

The Pennsylvania rule has heretofore been applied by this Court only in collision cases on the question of liability.[14] The majority of the Circuit Court of Appeals relies principally on *Richelieu Nav. Co. v. Boston Ins. Co.*, 136 U. S. 408, 423, 424 (1890) for the propriety of extension of the rule to non-collision cases and different issues. That case was an action on an insurance policy for damages to a Canadian vessel resulting from a stranding in Canadian waters. The policy excluded losses consequent upon want of ordinary care and skill in navigating the vessel and on unseaworthiness. At the time of the stranding the vessel was being navigated at full speed in a dense fog in violation of a Canadian statute which provided that any damage to a vessel arising from non-observance of the statute shall be deemed to have been occasioned by wilful default unless the contrary be proved. It was further charged that the vessel's compass was defective. This Court approved instructions to the jury placing the burden on the vessel owner to show affirmatively that neither the speed of the steamer nor the defects of the compass could have caused or have contributed to cause the stranding, in order to recover on the policy. This Court, referring to the Pennsylvania

[14] *Belden v. Chase*, 150 U. S. 674, 699 (1893); *The Martello*, 153 U. S. 64, 74 (1894); *Lie v. San Francisco & P. S. Co.*, 243 U. S. 291, 298 (1917).

rule, stated: " * * * and this was but the statement of the settled rule in collision cases." It was further stated:

> "In this case, in view of the * * * Canadian statute, and the fact that perils occasioned by the want of ordinary care and skill or of unseaworthiness were excepted by the policy, the same rule is applicable; hence, the burden was on the plaintiff to show that neither the speed of the steamer nor the defect of the compass could have caused, or contributed to the stranding. * * * .
>
> "* * * .
>
> " * * * *. It was necessary to the plaintiff's case that it should appear from the whole proof that the loss *was not* occasioned by the want of ordinary care by the master or on account of unseaworthiness and was not within the exceptions contained in the policy, against which plaintiff was not insured."

It is believed that this case is restricted to the factual and legal issues presented and that it is not to be taken as an extension or application of the Pennsylvania rule to stranding cases generally.[15]

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[15] The following cases referring to *Richelieu Nav. Co. v. Boston Ins. Co.*, 136 U. S. 408, 423 (1890) are likewise relied upon by the majority of the Circuit Court of Appeals: In *Flint & P. M. R. Co. v. Marine Ins. Co.*, 71 F. 210, 216 (C. C. Mich., 1895) a similar factual and legal situation was presented but it was unnecessary to apply the burden of proof announced by this Court as the evidence "establishes uncontestably the relation of cause and effect between the speed and the stranding of the steamer." In *Amer. Mcht. Marine Ins. Co. v. Liberty S. & G. Co.*, 282 F. 514 (C. C. A. 3; 1922), being an action on an insurance policy it was held that the defendant having alleged a breach of warranty of unseaworthiness had the burden of proof on that issue. The court merely refers to *The Pennsylvania* rule and its alleged application. In the *Material Service*, 1937 A. M. C. 925 (D. C. Wis., 1937), affirmed *Leathem Smith-Putnam Nav. Co. v. National U. F. Ins. Co.*, 96 F. (2d) 923, 928 (1938), being an action on an insurance policy, the lower court referred to the rule announced and required the plaintiff to show lack

The last decision of this Court referring to the Pennsylvania rule is *White Oak Transp. Co. v. Boston, Cape Cod & N. Y. C. Co.*, 258 U. S. 341, 344 (1922). The steamer BAY PORT grounded in the Cape Cod Canal after passing over two shoals where there was less than 25 feet of water. In cross actions for damages it was held that both the owner of the vessel and the Canal Co. ought to have known that it was unsafe to take the vessel through the canal and both were held at fault and their damages divided. The Canal Co.'s charter required the canal to be 25 feet deep throughout. It was urged that the shoals referred to caused the trouble and it was argued on behalf of the vessel owner that the Canal Co. had not sustained the burden of proving that the strandings could not have been caused by the shoal spots and on behalf of the Canal Co. that the Circuit Court of Appeals was right in not holding as a matter of law that the Canal Co. to avoid liability must prove that said shoal spots not only did not cause, but could not have caused the two strandings, or either of them. This Court said:

> "* * * but, notwithstanding *The Pennsylvania*, 19 Wall. 125, 22 L. ed. 148, we will accept the finding of the two courts that they *were not* the proximate cause."

We take this to be the ruling that this Court agreed with the contention of the Canal Co. that either the Pennsylvania rule was not applicable, or if applicable,

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of causation between an unseaworthy condition and the sinking of the vessel, but on appeal it was held unnecessary to deal with this procedural question as the evidence disclosed a loss falling within the exceptions of the policy.

that the burden of persuasion under the rule is met by showing that the violation *did not,* as distinguished from *could not,* have contributed to the strandings.

As further authority for the extension of the Pennsylvania rule to non-collision cases the majority of the Circuit Court of Appeals relies on the following cases: In *The M. M. Chase,* 37 F. 708, 713 (D. C. N. Y., 1889) apparently affirmed on appeal, *The Coventina,* 52 F. 156, 158 (D. C. N. Y., 1892), a vessel was held liable for damages to a consignee having a lien on cargo for failure to give appropriate notice of an attachment and it was held that the consignee was not required to show that if such notice had been given the cargo would have been saved, but that the burden was on the vessel to prove the contrary, citing *The Pennsylvania.* This decision, it is submitted, is anomalous insofar as it purports to apply a collision rule in an entirely different field and on an entirely different issue. In *People's Coal Co. v. Second Pool Coal Co.,* 181 F. 609 (D. C. Pa., 1910) there was a collision between a vessel and a sunken wreck which had not been properly marked as required by statute and in *Dorrington v. City of Detroit,* 223 F. 232 (C. C. A. 6; 1915) there was a collision between a schooner being towed by a tug and a drawbridge which had not been opened promptly as required by statute. The Pennsylvania rule was applied in these cases but it is not believed that they are authority for the application of the rule in non-collision cases as the peculiar reasons underlying the rule may as well be applied to these

types of collisions as any other. In *The Carbonero,* 106 F. 329, 335 (C. C. A. 1; 1901), although the court indicated that if there had been a statutory fault in connection with the misconduct of a tug which lost her barges, the Pennsylvania rule would have been applied, the rule was not applied. In *Central Vermont Ry. Co. v. Bethune,* 206 F. 868, 876 (C. C. A. 1; 1913) the court does no more than refer to the Pennsylvania rule as a rule applied in "collision cases." In *The Princess Sophia,* 61 F. (2d) 339, 347 (C. C. A. 9; 1932) the court referred to the Pennsylvania rule in a stranding case, but as no statutory violation was found, did not apply the same.

Second: This is not a collision case and the question of liability as such is not at issue. Liability, *prima facie,* has been established by petitioner's failure to deliver the cargo. Respondents are therefore not entitled to and do not require the procedural advantage of the Pennsylvania rule for the purpose of establishing liability.

Petitioner here seeks to obtain limitation of its liability under the statute (App. III) granting to shipowners such protection. Such limitation is to be granted under the statute if it appears that petitioner was without privity or knowledge of the cause of the stranding.[16] It is not sufficient that it appear that

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[16] *Lord v. Goodall,* 15 Fed. Cas. 884, 887 (C. C. Cal., 1877); *The Colima,* 82 F. 665 (D. C. N. Y., 1897); *The Rose Standish,* 26 F. (2d) 480 (D. C. Mass., 1928); *The Commonwealth,* 31 F. (2d) 142 (D. C. Mass., 1929); *The Calvert,* 37 F. (2d) 355, 358 (D. C. Md., 1929); *The 84-H,* 296 F. 427 (C. C. A. 2; 1923); *Benedict on Admiralty,* (5th ed., 1925) pp. 594, 596.

there was a failure in equipment, inspection or personnel. As stated in *The El Sol,* 45 F. (2d) 852, 855 (D. C. N. Y., 1930):

> "It must be shown that the fault in equipment, inspection or personnel actually contributed to the accident in respect to which the shipowner seeks limitation.
>
> "This is a practical world and an omission to which a shipowner is privy, but which has not any causal connection with the damage for which claim is made, is venial in the eyes of the law."

On the appeal, *Southern Pac. Co. v. United States,* 72 F. (2d) 212, 215 (C. C. A. 2; 1934) in which the District Court was affirmed, Learned Hand, J., states:

> "The petitioner need show no more than that he was not privy to the wrong which the claimant has proved.'"[17]

Respondents made no attempt to prove, nor did the Circuit Court of Appeals find that the violation of the statute caused or contributed to the stranding. The majority of the Circuit Court of Appeals has held that although the independent fact of faulty navigation by the pilot has been found by the ordinary burden of proof to have been the cause of the stranding, nevertheless limitation must be denied because of the failure of petitioner to prove that the violation of the statute could not in the sense of could not by possibility have contributed. This is both a misapplication and a misinterpretation of the Pennsylvania rule. A mis-

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[17] *In re Rapid Transit Ferry Co.,* 124 F. 786 (D. C. N. Y., 1903); *The Suduffco,* 33 F. (2d) 775, 776 (D. C. N. Y., 1929); *The Doris Kellogg,* 18 F. Supp. 159, 164 (D. C. N. Y., 1937), aff'd. 94 F. (2d) 1015 (C. C. A. 2; 1938).

application because it is not being applied in a collision case on the question of liability, and a misinterpretation of the *quantum* of proof required under the rule.

This application of the rule is in effect the creation of a presumption and giving to the presumption weight as evidence. In *New York Life Ins. Co. v. Gamer,* 303 U. S. 161, 171 (1938) in an action on a life insurance policy double indemnity was payable on death by accidental means. After stating that the presumption arising from a violent death required an inference of death by accident, it is stated:

> "The evidence being sufficient to sustain a finding that the death was not due to accident, there was no foundation of fact for the application of the presumption * * * . The presumption is not evidence and may not be given weight as evidence."

A legal presumption does not supply proof of a substantive fact. *United States v. Ross,* 92 U. S. 281, 283 (1875). Presumptions are never allowed against ascertained and established facts, when these appear, presumptions disappear. *Lincoln v. French,* 105 U. S. 614, 617 (1881); *Del Vecchio v. Bowers,* 296 U. S. 280, 286 (1935). So here, when it has been found from the evidence that the faulty navigation by the pilot was the cause of the stranding, there is no foundation for the application of a presumption or inference that the violation of the statute caused or contributed to the stranding.

The result of the application of the Pennsylvania rule to add to the burden of petitioner to show that it was without privity or knowledge of the cause of the loss is a judicial amendment of the limitation statute, and is not the liberal administration thereof enjoined by this Court. The statute requires no such burden and should be administered as written. *Earle & Stoddard v. Ellerman's Wilson Line,* 287 U. S. 420, 425 (1932). The effect of this decision is of the utmost importance requiring as it does that a petitioner for limitation of liability must, in addition to proving that it was without privity or knowledge of the actual cause of the loss, also prove that any statutory violation, of which it may have had privity or knowledge, could not have caused or contributed to the loss.

This additional burden has never been sanctioned by this Court. In *Southern Pac. Co. v. United States,* 72 F. (2d) 212, 215 (C. C. A. 2; 1934), a collision case the imposition of such additional burden was questioned, but "assuming * * * *arguendo*" its application it was found, as here, that the violation did not contribute to the collision and limitation of liability was granted. In *New York Marine No. 10,* 109 F. (2d) 56 (C. C. A. 2; 1940), a tug of that name was held solely at fault for a collision. The tug was short-handed with the knowledge of the owner and limitation of liability was denied because the owner failed to show that the deficiency in crew "was not" a contributory cause of the collision. This being a collision case the Pennsylvania rule was properly applicable on the question of

liability and the *quantum* of proof was correctly stated, but the extension of the rule to the issues on limitation of liability, as in the case at bar, is entirely without precedent and none of the cases cited in the decision support the novel application of the rule.

Such application of the Pennsylvania rule to the issues on limitation of liability will, of necessity, destroy the uniform administration of the limitation statute to domestic and foreign vessels alike. There are many statutes and regulations prescribing the details of manning, hours and working conditions as well as physical condition of vessels, which pertain only to the internal affairs of vessels, many of which are not in effect in other countries. The admiralty law as administered in our courts should, so far as possible, be uniform as to all vessels, both domestic and foreign, as respects their liability and the limitation thereof under the limitation statute. *The Scotland,* 105 U. S. 24, 33 (1881). If the DENALI instead of stranding had collided with a Canadian vessel (whose watch system was identical but not in violation of any applicable Canadian law), and if both vessels sought limitation of liability, the application of the Pennsylvania rule, as announced by the majority of the Circuit Court of Appeals, would result in denying limitation to the DENALI and granting limitation to the Canadian vessel. This is a result certainly never intended by this Court in announcing the Pennsylvania rule. On the other hand, as practically every maritime nation has adopted the International Rules of Navigation,

if the collision resulted from a violation of such collision rules, the Pennsylvania rule would be properly applicable on the issue of liability. It seems clear that the Pennsylvania rule was never intended to be applied except where a collision has resulted from a violation of those rules and regulations adopted for the sole and express purpose of preventing collisions and that it should never be applied in the case of violation of statutes or regulations relating solely to the internal management of a vessel.

It is respectfully urged that the questions presented involving the true meaning and proper application of the Pennsylvania rule are of such outstanding importance that this Court should assume jurisdiction.

Wherefore, it is respectfully prayed that the petition for writ of certiorari be granted.

Respectfully submitted,

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